

# CLIENTTIMES

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*See pages 9 and 11.*

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# Slammed!

## New ICANN Arbitration Rules Address Disputed Domain Name Transfers

by Joi White



Imagine this scenario:

*The phone rang at home at 7:03 that Thursday morning. It was the IT manager*

*from my company, calling in a panic. Our customer service reps were barraged with complaints from customers about bounced e-mail messages and problems reaching our servers. Further investigation found that someone had made subtle changes to our e-commerce website: customer orders were being taken and their credit cards were being charged, but not by us.*

*The IT manager explained that the official “WHOIS” record listing critical technical information for our web domain name had been altered, and that we no longer had access to change the details. Even worse, our liaison for handling the domain name, the Registrar, wasn’t able to unlock access to the record, because the domain name had been transferred to another Registrar. The new Registrar, located overseas, refused to even speak to us, because they said we were not authorized to make changes to the new “WHOIS” record for the domain.*

*We’d been “slammed.”*

While the account above is fictional, this is unfortunately not a hypothetical scenario for some domain name owners. The unauthorized transfer of

a domain from one Registrar to another is called “slamming” and may be part of a larger attempt to hijack or take unauthorized control of a domain name from its rightful owner.

There is a new framework for resolving disputes over domain name transfers between registrars that could be used to recover a slammed domain. The Internet Corporation for Assigned Names and Numbers, better known by its much-maligned acronym “ICANN,” established the Registrar Transfer Dispute Resolution Policy (“TDRP”) in November 2004.

The TDRP provides for a forum to resolve disputes involving the transfer of domain names to a new Registrar — or the failure to transfer a domain name to a new Registrar. Registrars are those organizations that register, renew, and maintain records regarding ownership of domain names: they are the intermediaries between domain name owners and the registries that control access to the domain name mapping system that serves as the backbone of the Internet.

The TDRP governs .biz, .com, .info, .name, .net, .org, and .pro Top Level Domains (“TLDs”) and a complaint under the TDRP can only be initiated by a Registrar, not by the domain registrant.

A request to transfer a domain to a new Registrar must be initiated by either the “Administrative Contact” or the registrant listed in the official WHOIS record for the domain. These are the only two entities authorized to initiate and approve a transfer request to move the domain to a new Registrar.

The new Registrar, or “Gaining Registrar,” is responsible for verifying and authenticating the transfer request with the registrant to avoid fraudulent requests that might occur as part of a hijacking scheme. The current Registrar has the option to confirm the transfer with the registrant, but is not required to do so.

If the Gaining Registrar authenticates the transfer request, and it is accepted by the current Registrar, then the domain is successfully moved to the new Registrar. Likewise, if the transfer request is authenticated, but the current Registrar refuses to honor the request, under the new ICANN rules the transfer will automatically take place five days after the request is made. (This assumes, of course, that the domain

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is not “locked” by the registrant. A locked domain cannot be transferred until the registrant removes the lock — an anti-theft mechanism provided by registrars.)

If the transfer request is denied by the current Registrar, the domain name registrant can seek relief, via the Gaining Registrar, under the TDRP. Under the ICANN rules, the current Registrar can only legitimately refuse a transfer request on certain grounds. For example, a request to transfer a domain that has already been transferred, or newly registered, within the past 60 days, must be refused. A current Registrar can also refuse a transfer where there is evidence of fraud, when the domain is the subject of an arbitration or court proceeding, when the domain has expired or payment for past registration terms is overdue, when the domain is in “lock” status, where the identity of the registrant is disputed, or when there is an express written objection to the transfer from the registrant.

The TDRP covers all disputes related to transfers between registrars, so while it seems the most common TDRP case would arise from refusal of a Registrar to transfer a domain, the TDRP can also be used to resolve disputes where a domain is fraudulently transferred to a new Registrar. For example, in January 2005, an internet service provider in New York, Public Access Networks Corporation (“Panix”), found its panix.com domain had been transferred to an Australian Registrar and that Panix no longer had control over the domain. It was reported that about 5,000 of the ISP’s customers were affected by this slamming and hijacking incident that resulted from the Gaining Registrar’s alleged failure to authenticate a fraudulent transfer request. Panix could have used the TDRP, through its Registrar, to regain its domain, but since the domain was under control

again within two days, it seems unlikely that the TDRP came into play.

There are two possible paths to take with TDRP complaints: the complaining Registrar can elect to first take its complaint to the Registry Operator, such as VeriSign for .com domains, and can appeal that decision to an arbitration panel, or it can complain directly to an arbitration panel. Decisions of the arbitration panel can be appealed to a court of competent jurisdiction.

#### How It Works

TDRP complaints must be filed no later than six months after the date of completion of the transfer at issue. After service, the defending Registrar

**“ There is no filing fee for lodging a TDRP complaint with the Registry Operator, but a fee will be assessed to the Registrar who does not prevail in the decision. ”**

has seven calendar days to respond and, from receipt of the response, the Registry Operator has 14 days to provide a decision (or decline to decide). In contrast, an arbitration panel has 30 days from receiving the defending Registrar’s response to reach a decision and can only approve or deny (or undo) the transfer. The TDRP does not provide for any award of damages, though a registrant might seek such damages in a traditional court of law.

There is no filing fee for lodging a TDRP complaint with the Registry Operator, but a fee will be assessed to the Registrar who does not prevail in the decision. There are, of course, fees associated with filing a complaint with an arbitration panel. Currently, two organizations are authorized to hear TDRP complaints: the National

Arbitration Forum (“NAF”) which is based in Minneapolis, Minnesota in the U.S., and the Asian Domain Name Dispute Resolution Centre, (“ADNDRC”) with offices in Beijing and Hong Kong. The NAF lists a fee of \$1,150 for filing a TDRP complaint before a single-member panel.

To date, there are no reported cases decided under the TDRP by either of the organizations authorized to adjudicate disputes under the new rules. In fact, it is difficult to imagine a situation in which a Registrar would be willing to pay a substantial sum and file a complaint over a domain that may only generate \$6.95 a year in registration fees. The registrant who is slammed or who is desperate to transfer its domain away from a Registrar might be willing to pay for arbitration, but a registrant is unable to file a complaint directly under the TDRP.

Perhaps more importantly, in a situation such as the one described at the beginning of this article, or in the real-world case of the panix.com domain, time is of the essence. A slammed registrant may not be able to wait two weeks or a month to regain control of its domain. By that time, an entire business could be destroyed, not to mention the good will in any trademarks associated with the domain name or website at issue. Thus, the TDRP may prove to be too expensive, both in terms of time and money, for registrants who need it most.

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*The views expressed in this article are those of the author and do not necessarily represent the views of Thomson CompuMark.*